



NEI Corporation (Seller)

STANDARD TERMS AND CONDITIONS OF SALE

GENERAL: This document represents the agreement (“Agreement”) between the parties with respect to sale of the products and/or services that are specified herein. These terms may not be modified except in writing and signed by an authorized representative of Seller. Any terms and conditions submitted in Buyer’s inquiry, purchase order, or other instruments or documents shall be null and void unless specifically agreed to in writing by Seller. Catalogs, website information, circulars, verbal representations, and similar pamphlets of Seller are provided for general information purposes only and are not a part of the agreement between Seller and Buyer. References to this Agreement shall be deemed to also be references to Seller’s standard form of purchase order which is used for purchases of products (or materials), which is the only form of purchase order to be used for purchases of all products (or materials) from Seller.

PURCHASE ORDER: Buyer shall order products from Seller by written purchase order (facsimiles and email documents are accepted). Buyer expressly agrees to the terms and conditions of this Agreement by issuing a purchase order to Seller. The provisions of this Agreement shall apply to the exclusion of all other terms, conditions, understandings, warranties, conditions, covenants, and other obligations that may be contained in any other document (including but not limited to any terms or conditions Buyer purports to apply under any purchase order, confirmation of order, specification, or other document) unless otherwise expressly agreed in writing between the parties. In the event of any conflict between the terms and conditions contained in this Agreement and any other document, purchase order or other writing or understanding, the terms and conditions of this Agreement shall govern.

PRICES: All prices are in U.S. dollars, F.O.B. from Seller’s point of sale and do not include any applicable freight charges, shipping costs, insurance, import licensing fees or duties, or foreign, federal, state or local taxes (which are to be paid by Buyer).

LIMIT ON PRICE QUOTATION/TERMINATION: Any price quotation herein shall, at Seller’s option, expire unless Seller has received Buyer’s Purchase Order relating to the products (materials) to be purchased hereunder prior to the first to occur of any of the following events: i) the expiration of thirty (30) days from the date of such price quotation; ii) the receipt by Seller of a material (for purposes of this Section, the term, “material” shall mean an increase in excess of ten (10%) percent) price increase from the suppliers of any products or materials to be incorporated into or used in the manufacture of the products (or materials) to be purchased by Buyer hereunder; iii) any Force Major event (as defined below) which renders Seller reasonably incapable of fulfilling the proposed order in the same manner and with the same efficiencies available to Seller prior to such Force Major event; iv) or Seller’s notification to Buyer that Seller is revoking such price quotation.

SPECIAL ORDERS: It is further understood and agreed between Buyer and Seller that if this Agreement covers products (or materials) that are to be manufactured especially for Buyer (i.e. such specific products (or materials) are not typically manufactured by Seller for sale to end-users) and this Agreement is suspended or terminated by either party for any reason, Buyer shall be responsible for taking delivery of and making payment for such products (or materials) or services as have been completed, are in inventory, or are in process on the date notice of the suspension or termination is received by Seller; provided, that if Buyer for any reason cannot accept delivery of such products, Buyer will make payment therefore as though delivery had been made and Seller will store such products for Buyer’s account and at Buyer’s expense for only a reasonable time frame.

STANDARD PAYMENT TERMS: An invoice for products (or materials) and/or services will be issued at time of shipment. Payment in full is due within thirty (30) days from the date of shipment and payable in United States Dollars, (USD). All remittances hereunder, including interest payments (if any), shall be made without deduction for exchange fluctuations, customs or foreign government assessments (taxes, stamps, or similar charges). Payments not received by Seller within thirty (30) days of the shipment date shall be subject to a finance charge equal to the lesser of i) one and one-half percent (1.5%) per month finance charge or ii) the maximum interest rate permissible under law, assessed against the unpaid balance from the date of invoice until the date payment is received by Seller. Any such interest rate assessed shall not be a penalty and instead reflects a genuine pre-estimate of the actual loss Seller will suffer as a result of late payment by Buyer.

Please note that for international shipments, a letter of credit may be required at the discretion of Seller.

In the event Buyer is in violation of the foregoing terms of payment, or in the event Seller shall reasonably doubt the financial responsibility of Buyer or Buyer’s ability to make payment in full hereunder, Seller may decline to make further deliveries of product (or materials) hereunder until such time as Buyer has provided Seller with reasonable assurances of performance hereunder (which may include delivery of cash or other security satisfactory to Seller). Buyer shall promptly (but in all events within thirty (30) days following request delivered to Buyer) reimburse Seller for all collection and attorneys’ fees incurred by Seller on past due accounts that are referred to an attorney, collection agent or other similar party for collection.

TAXES: Any sales, use, or other similar type taxes imposed on the transactions under or contemplated by this document are not included in the price quoted by Seller to Buyer. Such taxes shall be the sole responsibility of Buyer and may be billed separately by Seller or third parties to Buyer.

SHIPPING TERMS: Shipping, special packaging, insurance (if requested) and handling charges are prepaid by the Seller and added to the invoice unless other instructions are clearly stated on the Buyer’s written purchase order and agreed to by Seller.

PARTIAL DELIVERY: If for any reason Seller is unable to supply the total quantity for products (or materials) specified herein in one shipment, Seller may distribute its available supply on such basis as it may deem fair and practical, without liability for any failure of performance which may result there from. Seller assumes any incremental delivery costs associated with multiple shipments.

DELIVERY, TITLE & RISK OF LOSS: Delivery dates are approximate, and are based upon prompt receipt by Seller of necessary raw materials, parts, or goods. Seller will notify Buyer of any delivery delays in a timely manner. Failure of Seller to receive any of such items in a timely manner shall affect a corresponding extension of Seller’s performance dates. Unless otherwise specified by Seller, all shipments are F.O.B. Seller’s shipping dock. Full risk of loss (including transportation delays and losses) shall pass to Buyer upon delivery of products to the F.O.B. point, or if Seller consents to a delay in shipment at the request of Buyer, risk loss shall pass upon notification by Seller that the products are ready for shipment.

EXCUSABLE DELAYS: Seller shall not be responsible or liable for nonperformance or delays in performance occasioned by any causes beyond Seller’s reasonable control, including, but not limited to, any labor difficulties, strikes, delays of vendors or carriers, failure of Seller to receive promptly any parts, goods, or equipment to be provided by or on behalf of Buyer, compliance by Seller with Buyer’s change or other orders, fires,



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explosions, floods, casualties, acts of God, war, riots, acts of terrorism, governmental actions and materials shortages (each such event, a "Force Major" event). Any delays so occasioned shall affect a corresponding extension of Seller's performance dates.

WEIGHT OF SHIPMENTS: Weight of all shipments shall be determined at FOB point by ascertaining the gross and tare weight of each bulk container. Claims on account of weight will be allowable only i) if for one-half of one percent (0.5%) or more of entire contents of all shipments except bulk rail cars and trucks on which claims shall be allowable only if for one percent or more of entire contents, ii) if made within ten (10) days after receipt at destination, iii) if supported by certified railroad scale tickets in the event of bulk car shipments, and iv) if the Buyer proves to satisfaction of the Seller that the container in question was entirely emptied.

PROPER USE & HANDLING OF GOODS: Buyer acknowledges that it has received and is familiar with Seller's labeling and literature concerning the products (or materials) sold hereunder and will forward such information to its employees, who handle, process, or sell such products and customers of such products, if any.

TERMINATION: This Agreement (and the purchase of products (or materials) evidenced by a purchase order entered into pursuant hereto) may be terminated in any one of the following situations:

- 1) By Buyer if Seller fails to deliver products (or materials) within sixty (60) days of the Estimated Delivery Date.
- 2) By either party at any time upon their mutual agreement.
- 3) By either party, after notice and thirty (30) days to cure, for a material breach of this Agreement by the other party. A few such Substantial Breaches (provided merely as examples and not as an exhaustive list) include (i) Buyer being more than ninety (90) days in arrears in its payments to Seller, and ii) Buyer infringing, in the reasonable opinion of Seller, any intellectual property rights of Seller.
- 4) By either party in the event (i) of the liquidation, dissolution or winding up of the other party, (ii) of the bankruptcy, insolvency, moratorium, or receivership of the other party, (iii) that the other party makes a general assignment for the benefit of its creditors, or (iv) that the other party acknowledges in writing its inability to pay its debts as they become due.
- 5) By either party in the event that it is not possible to comply with any applicable regulatory requirements.

WARRANTY: Seller warrants that the products (or materials) delivered hereunder meet Seller's specifications as stated in this Agreement. Such warranty will extend for a period of ninety (90) days from the delivery of the products (or materials) and all claims for defective work must be made in writing immediately upon discovery and in any event within ninety (90) days from date of delivery by Seller. Upon Buyer's submission of a claim and its substantiation, Seller shall at its option either replace defective products (or materials) at the original F.O.B point of delivery, or refund an equitable portion of the contract price.

The forgoing warranties are exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. Buyer assumes all risk and liability resulting from use of the products delivered hereunder, whether used singly or in combination with other products.

SELLER DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, ARISING BY STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NONINFRINGEMENT. NO IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE SHALL APPLY AND SELLER DISCLAIMS ANY SUCH WARRANTIES.

IN NO EVENT SHALL SELLER HAVE ANY LIABILITY TO BUYER OR TO CUSTOMERS OR ANY OTHER THIRD PARTY FOR ANY LOST PROFITS, HEALTH CONSEQUENCES, ENVIRONMENTAL HAZARDS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OF PRODUCTS OR THE FAILURE OF PRODUCTS TO PERFORM, OR FOR ANY OTHER REASON. THESE LIMITATIONS APPLY NOTWITHSTANDING SELLER BEING ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY. IT IS ACKNOWLEDGED BY THE PARTIES THAT NOTHING IN THIS STATEMENT SHALL LIMIT A PARTY'S OBLIGATION TO PAY AMOUNTS ALREADY DUE AND OWING TO THE OTHER PARTY.

CLAIMS FOR DAMAGES: When received, the Buyer should check the goods for conformance with applicable specifications immediately. No claim of any kind, whether as to products (or materials) delivered or for non-delivery of products, and whether or not based on negligence, tort, breach of contract or warranty, indemnity, or otherwise, shall exceed in the aggregate, an amount equal to the purchase price actually received by Seller for the products in respect of which damages are claimed; and failure to give notice of claim within ninety (90) days from date of delivery or the date fixed for delivery (in the case of non-delivery), shall constitute a waiver by Buyer of all claims in respect of such products. No charge or expense incident to any claims will be allowed unless approved by an authorized representative of Seller. Products shall not be returned to Seller without Seller's prior permission, and then only in the manner prescribed by Seller.

THE REMEDY HEREBY PROVIDED SHALL BE THE EXCLUSIVE AND SOLE REMEDY OF BUYER, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF SUCH PARTY.

RETURN POLICY: Goods (other than special ordered products (or materials)) purchased from the Seller can be returned only after a return authorization number is issued. Special ordered products (materials) may only be returned with the consent of Seller, and may be subject to restocking or freight charges if approval to return is granted. If materials are shipped in tank trucks or hopper trucks furnished by a carrier, all charges made by the carrier for detention at destination shall be for Buyer's account and shall be payable to Seller. Subject to a restocking fee and product inspection upon return, Seller will accept unopened regular production product only for a 30 day period after our shipment date.

TECHNICAL ASSISTANCE: At Buyer's request, Seller may furnish such technical assistance and information as it has available with respect to the use of the products (or materials) covered by this Agreement. Such assistance may be subject to a separate consulting agreement. Unless otherwise agreed in writing, Buyer assumes sole responsibility for results obtained in reliance thereon.

PATENT INFRINGEMENT: Seller warrants that the use or sale of the products (or materials) delivered hereunder will not infringe the claims of any United States patent covering the products themselves; but does not warrant against infringement by reason of the use thereof in combination with other products or in the operation of any process.

Nothing contained in this Agreement shall be deemed to grant or convey to Buyer any license, right to use or other right with respect to any of Seller's Confidential Information, trade secrets, know-how, patents or other intellectual property rights (including without limitation, custom formulations and other related rights), all of which are and shall remain the sole and exclusive property of Seller. Without limiting the generality of the foregoing, nothing contained in this Agreement shall be deemed to grant to Buyer or any other party the right or license to manufacture or produce any

products or materials substantially similar to the products (or materials) to be delivered hereunder, which incorporate any of Seller's Confidential Information, trade secrets, know-how, patents or other intellectual property rights (including without limitation, custom formulations and other related rights).

GOVERNMENT RESTRICTIONS: If any government action should place or continue limitations on the price or delivery of products provided for in this Agreement such that it would be illegal or against public or government policy for Seller to sell or deliver, or for Seller to charge, assess or receive the full amount of or to increase such prices as determined by this Agreement, then Seller shall have the option (1) to continue to perform under this Agreement subject to such adjustments in prices that Seller may deem necessary to comply with such Government action, (2) to revise this Agreement, subject to Buyer's approval, in order to most nearly accomplish the original intent of this Agreement, or (3) to terminate performance of the affected portions of this Agreement without liability for any damages. Buyer shall not export, directly or indirectly, any technical data acquired pursuant to this Agreement or any product utilizing or incorporating any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

ASSIGNABILITY: This agreement is not assignable or transferable by either party, in whole or in part, except with the prior written consent of the other party.

SEVERABILITY: In the event any one or more of the provisions of this Agreement is found invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

NO WAIVER: The parties agree that the failure of a party at any time to require performance by the other party of any of the provisions herein shall not operate as a waiver of the right of a party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

LEGAL EXPENSES: In the event any legal action is instituted between the parties in connection with this Agreement, the prevailing party, in addition to any other rights and remedies it may have, shall be entitled to reimbursement of its expenses, including court costs and reasonable attorneys' fees.

CONFIDENTIALITY: Each party acknowledges that in the course of performing its obligations hereunder it may receive or have access to information that is confidential and proprietary to the other party ("Confidential Information"). The substantial value of such Confidential Information would be impaired if it were disclosed to third parties. Thus, each party agrees not to use Confidential Information of the other party except in the performance of this Agreement and not to disclose such Confidential Information to third parties except on a "need to know" basis in the performance of its obligations under this Agreement and only under non-disclosure restrictions approved by the party owning the Confidential Information. Except as expressly set forth in this Agreement, all Confidential Information must be labeled as "Confidential" when provided to the other party, or, in the case of oral disclosure, must be confirmed expressly in writing as "Confidential" within ten (10) calendar days of disclosure. Both parties agree to abide by the terms of such markings and to be liable for all loss or damage incurred by the other party as a result of the improper or unauthorized use of such data. The obligations contained in this Section shall survive the termination of this Agreement and shall subsist for so long as the Confidential Information remains confidential. Moreover, Buyer shall not at any time manufacture or have manufactured any products utilizing

any of Seller's Confidential Information or incorporating any of Seller's intellectual property rights and shall not prepare any derivative works or products based upon Seller's Confidential Information or intellectual property rights. The parties hereto acknowledge and agree that, in addition to the non-disclosure restrictions contained in this Section, the parties shall remain bound by the terms and conditions of any other confidentiality or non-disclosure agreement entered into between the parties (each, a "Supplemental NDA"). In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any Supplemental NDA, the terms and conditions of this Agreement shall govern.

APPLICABLE LAW: This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of New Jersey, including its enactment of the Uniform Commercial Code, and the federal regulations of the United States, without reference to conflict of laws principles. The parties agree that any action to enforce this Agreement may be brought either in (i) the courts of the state of New Jersey located in Middlesex County, New Jersey, or U.S. or (ii) the United States District Court, for the District of New Jersey located in Newark, New Jersey, which such courts shall be deemed proper venues for all purposes. Buyer irrevocably submits to the jurisdiction of said courts, and agrees not to bring or maintain any action against Seller in any other jurisdiction or venue. In addition to bringing and/or maintaining actions in the aforementioned courts, Seller reserves the right to take and enforce proceedings in any other court having jurisdiction over the subject matter hereof (including international courts or tribunals) which it deems proper.

ENTIRE AGREEMENT: This document (including all documents referenced herein) contains all of the terms and conditions with respect to the sale and purchase of the products (or materials) offered for sale hereunder. These terms and conditions supersede any terms and conditions of previous date and no modifications thereof shall be binding on Seller unless separately contracted in writing and agreed to by a duly authorized representative of Seller. No modification shall be affected by the acknowledgment or acceptance of purchase order forms stipulating different conditions.

CORPORATE NAME: Buyer shall not, without obtaining the prior written consent of Seller, use Seller's name, trademarks or other identifying materials in connection with its products or services (including any reference in any advertising documents, materials or circulars, or on Buyer's website).

INJUNCTIVE RELIEF: Each of the parties hereto acknowledges and agrees that any breach or threatened breach of the sections entitled "Confidentiality" and/or "Patent Infringement" may cause irreparable harm to the non-breaching party for which monetary damages may be difficult to ascertain or may be an inadequate remedy. Therefore, in addition to any other rights or remedies available to them, each of the parties shall have the right to seek and obtain injunctive relief or other equitable remedies for any breach or threatened breach of such sections.

SURVIVAL: The sections in this Agreement entitled "Taxes", "Delivery, Title & Risk of Loss", "Warranty", "Claims for Damages", "Return Policy", "Patent Infringement", "Assignability", "Severability", "No Waiver", "Legal Expenses", "Confidentiality", "Applicable Law", "Entire Agreement", "Corporate Name", "Injunctive Relief" and "Survival" shall survive any termination or expiration of this Agreement.